

AETNA HEALTH AND LIFE INSURANCE COMPANY, AETNA INSURANCE COMPANY OF AMERICA AND PRUDENTIAL HEALTH CARE PLAN, INC.'S FIRST AMENDED ANSWER

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Third-Party Defendants Aetna Health and Life Insurance Company ("AHLIC"), Aetna Insurance Company of America ("AICA") and Prudential Health Care Plan, Inc. ("PHCP") file their First Amended Answer to the Third-Party Complaint (the "Third-Party Complaint") filed against them by Defendants/Third-Party Plaintiffs East Texas Medical Center Athens, East Texas Medical Center Regional Healthcare System, East Texas Medical Center, East Texas Medical Center Pittsburgh, East Texas Medical Center Fairfield, East Texas Medical Center Rusk, East Texas Medical Center Crockett, East Texas Medical Center Jacksonville, East Texas Medical Center Clarksville, East Texas Medical Center



Trinity, East Texas Medical Center Carthage, East Texas Medical Center Quitman, East Texas Medical Center Mount Vernon, and East Texas Medical Center Grand Saline (collectively referred to as "Third-Party Plaintiffs"), and in support thereof, respectfully show the Court as follows:

1. No response is required to the introductory paragraph of the Third-Party Complaint.

I.

2. With respect to the allegations contained in Section I of the Third-Party Complaint, AHLIC, AICA, and PHCP admit that they have been served with the Third-Party Complaint in the above-captioned lawsuit. AHLIC, AICA, and PHCP are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Section I of the Third-Party Complaint, and therefore deny those allegations.

II.

3. With respect to the allegations contained in Section II of the Third-Party Complaint, AHLIC, AICA and PHCP admit that Plaintiff Nathan Jackson filed an Original Petition making a number of allegations and asserting various claims against Defendants/Third-Party Plaintiffs. AHLIC, AICA and PHCP further admit that Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiff. AHLIC, AICA and PHCP otherwise deny the allegations contained in Section II of the Third-Party Complaint, and deny the allegations contained in the Plaintiff's Original Petition as referenced in the Third-Party Complaint, to the extent the allegations in either pleading are directed toward or refer to AHLIC, AICA and PHCP. AHLIC, AICA and PHCP are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Section II of the Third-Party Complaint, and therefore deny those allegations.

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III.

4. With respect to the allegations contained in Section III of the Third-Party Complaint, AHLIC, AICA and PHCP deny that they made payments for medical care provided to Nathan Jackson or received refunds due to credit balances on such patient's accounts. AHLIC, AICA and PHCP are otherwise without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Section III of the Third-Party Complaint.

IV.

5. With respect to the allegations contained in Section IV of the Third-Party Complaint, AHLIC, AICA and PHCP are without knowledge or information sufficient to form a belief as to whether Third-Party Plaintiffs are liable for any damages to Plaintiff. AHLIC, AICA and PHCP deny that Third-Party Plaintiffs are entitled to contribution or indemnity from AHLIC, AICA and PHCP or that Third-Party Plaintiffs are entitled to recover from AHLIC, AICA and PHCP on any other legal theory.

V.

- 6. AHLIC, AICA and PHCP are without knowledge or information sufficient to form a belief as to the truth of the factual allegations contained in Section V of the Third-Party Complaint.

 No response is required to the legal assertions contained in Section V of the Third-Party Complaint.
- 7. AHLIC, AICA and PHCP deny that Third-Party Plaintiffs are entitled to any relief from AHLIC, AICA and PHCP as requested in the prayer of the Complaint.
- 8. All allegations contained in the Third-Party Complaint not specifically admitted are denied.

AFFIRMATIVE DEFENSES

- 9. Third-Party Plaintiffs' claims against AHLIC, AICA and PHCP fail as a matter of law because AHLIC, AICA and PHCP did not provide health benefits or coverage to Nathan Jackson.
- 10. Third-Party Plaintiffs' Complaint seeks benefits pursuant to employee benefit plans under ERISA. As such, any state law claims asserted by Third-Party Plaintiffs relate to the Plan and are, therefore, preempted by ERISA. Accordingly, to the extent Third-Party Plaintiffs' Complaint is based on state law claims, the Complaint fails to state any claim upon which relief can be granted.
- To the extent Plaintiff's Complaint and the Third-Party Plaintiffs' Complaint seek benefits pursuant to an employee welfare benefit plan under ERISA, any state law claims asserted by Plaintiff and Third-Party Plaintiffs relate to the Plan and are, therefore, preempted by ERISA.
- 12. Any decisions regarding Plaintiff's or Third-Party Plaintiffs' claim for benefits were not an abuse of discretion.
- 13. Any decisions regarding Plaintiff's or Third-Party Plaintiffs' claim for benefits was not arbitrary and capricious.
- 14. Any benefit determinations, and any alleged reimbursements, with respect to Plaintiff's or Third-Party Plaintiffs' claims for benefits were proper and correct under the terms of the Plan or Plans under which benefits were paid, if any.
- 15. Any damages allegedly sustained by Third-Party Plaintiffs, if any be proved, were caused in whole or in part by the culpable conduct of Plaintiff, Third-Party Plaintiffs, or other third parties or instrumentalities over whom AHLIC, AICA and PHCP had no right of control and, therefore, the amount of any damages otherwise recoverable against AHLIC, AICA and PHCP

should be extinguished or reduced in comparative proportion to the culpable conduct of Plaintiff,
Third-Party Plaintiffs or any other third parties.

- 16. AHLIC, AICA and PHCP are informed and believe and on that basis allege that Third-Party Plaintiffs' Complaint, and each cause of action therein, is barred by reason of Article VI of the United States Constitution.
- 17. Third-Party Plaintiffs' damages, if any be proved, should be reduced by the amount attributable to Third-Party Plaintiffs' failure to mitigate damages.
- 18. On information and belief, Third-Party Plaintiffs' claims against AHLIC, AICA and PHCP are barred by the doctrines of estoppel, waiver, laches and unclean hands.
- 19. Third-Party Plaintiffs failed to perform all conditions necessary to recover from AHLIC, AICA and PHCP in this lawsuit.
- 20. Based on information and belief, Third Party Plaintiffs' claims are barred because the administrative remedies provided for in the Plan or Plans at issue in this case were not exhausted.

WHEREFORE, PREMISES CONSIDERED, Defendants AHLIC, AICA and PHCP pray that upon final trial of this cause, they be granted judgment, that Third-Party Plaintiffs take nothing and that AHLIC, AICA and PHCP recover their fees, costs of court and be awarded such other and further relief to which they may be justly entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Dimitri Zgourides, hereby certify that a true and correct copy of the foregoing document was served upon counsel of record by certified mail, return receipt requested, on this _/y ___ day of September, 2000, addressed as follows:

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